

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6550

In Re: MARTELL WHITAKER,

Petitioner.

On Petition for Writ of Mandamus.
(CR-98-1016-DWS)

Submitted: August 12, 2005

Decided: September 30, 2005

Before NIEMEYER and MICHAEL, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Petition granted by unpublished per curiam opinion.

Martell Whitaker, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Martell Whitaker petitions for writ of mandamus, seeking an order directing the district court to rule on a pending 18 U.S.C. § 3582(c)(2) (2000) motion. The district court has taken no action with respect to the motion, which Whitaker filed in July 2001.

In accordance with an order from this court, the Government responded to the petition, opposing granting relief. We find the Government's argument unpersuasive.

We conclude that Whitaker has established a clear and indisputable right to expeditious treatment of his § 3582(c)(2) motion and that no other adequate remedy is available. Therefore, we find that he is entitled to a writ of mandamus. See Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980); In re Beard, 811 F.2d 818, 826 (4th Cir. 1987).

Accordingly, we grant leave to proceed in forma pauperis and grant the petition for writ of mandamus. The district court is ordered to act on case No. CR-98-1016-DWS within sixty days of the date of this opinion. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION GRANTED